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Taxation and Forest Management on Private Lands in Ontario

An overview and information document prepared for Ministry of Natural Resources staff.

1982

Ontario

Ministry of Natural Resources

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Minister

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Deputy Minister

No. 5224

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TAXATION AND FOREST MANAGEMENT ON PRIVATE LANDS IN ONTARIO

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Abstract

The decision by the owners of forest lands whether or not to undertake forest management activities on their lands will be affected by tax considerations. Canadian income tax regulations recognize five classes of forest property, each with its own set of characteristics. Two methods of reporting forest income and forest management expenses are applicable depending on the class of property under consideration. The study highlights these reporting methods and compares them to similar methods used in the United States.

The treatment of capital gains and losses that apply to forest property is discussed and appropriate capital cost and depletion allowances are also identified.

The assessment of forested land in Ontario for property taxation is administered by the Province. Accordingly, the property classifications available to forest landowners under Federal tax legislation do not apply to property assessment. The application of market-value assessment on forested lands is compared to the assessment on farm property.

This is an information and reference document initially prepared for Ministry staff by D. Puttock of the University of Toronto during 1980.

TAXATION AND FOREST MANAGEMENT OF PRIVATE LANDS IN ONTARIO

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TAXATION AND FOREST MANAGEMENT ON PRIVATE LANDS IN ONTARIO

1.0 Introduction

Periodically, individuals and companies make decisions as to whether or not, how, and when to undertake forest management activities. There is, of course, no standardized decision-making framework or rigid set of considerations and value weightings within which such decisions are made. As a result, even in the face of identical circumstances, the decisions, and thus the actions, of different individuals are highly unpredictable and will differ to significant degrees. However, as has been immortalized in North American folklore, there are two things that can be counted on in this life -- death, and above all else, taxes. The latter of these is our pre-eminent concern in this report.

In terms of input to initial decisions, and/or in terms of post-action impacts, tax considerations do in fact play a key role in determining the existence, scale and nature of forest management practices undertaken in the private sector.

Purpose: The purpose of this brief report, initially prepared by D. Puttock of the University of Toronto, is to provide Ministry staff with an up-to-date documentation and discussion of the

taxation treatment of forest management expenditures in Ontario.

It is assumed that such a report will improve the familiarity of Ministry staff with the tax rules, options and burdens arising from the Canadian and Ontario tax system, as may be relevant to the forest management decisions of forest property owners or licensees.

It is, of course, necessary to caution that the taxation system is an exceedingly complex and imprecise subject, often requiring reference to the legislation, interpretive bulletins, court rulings and specialized legal or accounting advice.

2.0 Forest Land in Ontario

2.1 The Ownership of Forest Land in Ontario

Approximately 85.5% of the productive and potentially productive forest area in Ontario is retained under Crown ownership (1) (Table 1). The right to cut and remove timber from these lands is granted under licence.

The remaining forest area is referred to as "patented lands" and include all lands that are privately owned. In some patents, such as mining patents, the timber is reserved to the Crown.

Table 1. Ontario Land Classification Within the Forest Zone (1,000 ha)

Land Status and Ownership	Forest Land: Productive	Forest Land: Potentially Productive	Non-Forest Land	Total Area
Provincial Crown	34,870	-	21,640	45,510
Private (patented)	5,074	761	6,948	12,783
	39,944	761	28,588	69,293
Provincial parks and reserves				4,906
Federal Crown				606
Federal parks and reserves				658
				75,463

Source: F.L.C. Reed and Associates Ltd., 1978.

Statistics prepared by the Ontario Ministry of Natural Resources indicate that 1.202 million hectares or 20.6% of the patented forest land are contained in large land holdings. Of these, 958,500 hectares are owned by five corporations - Abitibi Paper Co. Ltd., Algom Central Railway, Newaygo Timber Co., Spruce Falls Power & Paper Co. Ltd., and Transcontinental Timber (2). Approximately 97% of these 1.202 million hectares are owned by active forest products companies.

2.2 The Contribution of Private Forest Land to the Economy of Ontario

Reliable estimates do not exist for the quantity and value of roundwood produced from private forest lands in Ontario. Partial estimates may be obtained from the Census of Agriculture and from the Ministry's Mill Licence Return statistics. However, neither of these is specifically designed for, nor complete in deriving such estimates. Thus the proportion of Ontario roundwood production originating on patented lands can only be approximtated as somewhere between 15% and 35% of the provincial total.

Characteristics of patented forested lands are that they tend to exhibit locational advantage relative to transportation routes, processing facilities, and consumer markets. Additionally, they tend to be of higher productivity than the neighbouring Crown lands. Both of these characteristics are, of course, a function of the historical development of the province and the selection and provision of agricultural, military and railway land grants.

Due to these locational and productivity characteristics, funds invested in forest management activities on these private forest lands could potentially yield a greater return to the Gross Provincial Product than equivalent investments on remote Crown lands.

3.0 Forest Management on Private Land

3.1 Forest Management Defined

The term "forest management" comprises the following activities: site preparation; reforestation; stand and tree improvement; stand conversion; site productivity improvement, including drainage improvement, stand and site protection; and timber harvesting, including the construction and maintenance of access roads for harvesting and stand protection.

Research as an activity has been excluded from the definition as there are a number of very broad and favourable tax measures specific to research and research corporations.

Nursery operations are not within the definition of forest management even though they involve many of the activities described. These operations are subject to the same taxation treatments accorded to other businesses.

3.2 Timber Production is "Farming"

The concept that trees are a renewable resource, that forest stands may be treated as crops that are planted or seeded, tended and protected until mature and finally harvested to produce raw forest products is not new. Foresters have long recognized that many of the activities such as sowing, tending, and harvesting carried out by a farmer growing wheat or vegetables

may be applied to the production of timber. Although the timber crop requires a longer time period to reach maturity than most farm crops, it has been argued that timber production is farming and should receive the same favourable taxation treatments accorded to other farming operations (3).

Under the Canadian Income Tax Act, some classes of forest property are considered to be bona fide farms and receive tax treatment as such. Other classes of forest property are afforded quite different treatments.

The Province of Ontario also administers a number of statutes which may affect the taxation of forest property owners engaged in timber production and forest management activities.

Statutes such as the Assessment Act do not as a general rule recognize the production of timber and corresponding forest management activities as bona fide farming operations and do not accord the same tax considerations to forest property owners that farmers receive. (The one exception to this rule can be found in the Retail Sales Tax Act which was recently amended to exempt certain tools used on tree farm operations from sales tax.)

4.0 The Canadian Tax System

4.1 The Taxing Powers of the Federal, Provincial and Municipal Governments

The nature of the tax system is rooted in the BNA Act, which provides unlimited taxing powers to the Federal government and provides the provinces with the restricted right to levy taxes which are both direct and within their geographic boundaries.

In Ontario, the principal taxes levied by governments are:

Federal Taxes	- corporate income tax
	- personal income tax
	- excise (production) tax
	- customs duties
Provincial Taxes	- corporate income tax
	- personal income tax
	- consumption taxes (retail sales tax, motor fuel taxes etc.)
	- mining tax
Municipal Taxes	- property taxes

The tax forms of prime relevance to forest management activities are corporate income, personal income and property taxes; the first two of which are heavily impacted by the definition and types of income generated and by the expenses incurred.

4.1.1 Income Types

There are 4 types of income for tax consideration:

- employment income
- investment income
- business income
- capital gain

Income from employment (salary, wages, commissions, etc.) is taxed on a gross basis such that costs incurred in earning it (travel, housing, clothing, etc.) generally may not be deducted for tax purposes, other than the standard (and nominal) $500 employment expenses allowance.

Income realized through income-producing investments (bank interest, royalties, dividends, etc.) is taxed after the allowance for and deduction of reasonable expenses related to their ownership and maintenance (financing costs, safekeeping charges, investment counselling fees, etc.)

Business income, arising from the privision of goods or services where there is a reasonable expectation of profit, are taxed on a net basis, after deduction of all costs incurred in generating such income.

Capital gain (and capital loss) arising from the difference between the sale price and the cost price of property (real estate, stocks, works of art, etc.) are subjected to tax on one-half of the capital gain,

at the taxpayers normal (marginal) corporate or personal tax rate. It is an advantage to the taxpayer, where permitted, to declare income as a capital gain rather than as business or investment income because one-half of that income would effectively be tax-free.

4.2 Personal and Corporate Income Tax Rates

4.2.1 Personal Income Tax (PIT)

Income from employment, property, business and capital gain is subject to taxation via application of a progressive rate structure (that rate rising from 9% to 62% with increasing levels of income) on calculated taxable income.

Generally, an estimated amount of PIT to be paid on employment income is withheld at source through payroll deductions and where more than 25% of gross income is derived from income sources other than employment (property or business), taxes are submitted quarterly in either historic or estimated amounts. By April 30, each taxpayer files an official PIT return for income earned during the previous calendar year.

In Ontario, provincial personal income tax is assessed as a surcharge in an amount equal to 44% of the federal personal income tax owing and the combined amount is administered and collected by the federal government on behalf of the Province.

4.2.2 Corporate Income Tax (CIT)

Income earned by a corporation from property (investment income), business or capital gain is subject to taxation via the application of a fixed rate applied to taxable income (i.e. profit). Both Federal and Provincial governments collect CIT, with advantageous rates available for small business and for manufacturing

and processing income.

The Federal government provides a "10% abatement" in respect to income earned in a province, such that the combined tax rate is the sum of the federal and provincial rates, less the 10% abatement. The rates in effect in Ontario for 1979 Income (noting that corporations may define their own taxation year) are:

Table 2. COMBINED CIT RATES IN ONTARIO

	Manufacturing & Processing Income		Income Generally	
	Regular Rate	Small Business Rate	Regular Rate	Small Business Rate
Federal General Rate	40%	20%	46%	25%
Provincial Abatement	-10%	-10%	-10%	-10%
Ontario Rate	12%	9%	12%	9%
Combined Rate	42%	19%	48%	24%

5.0 Classification of Forest Property

The Canadian Income Tax Act and Regulations and the corresponding Interpretation Bulletins recognize five classes of forest property.[1]

i) Timber Resource Property

ii) Timber Limit and Cutting Rights

iii) Farm Woodlot

iv) Tree Farm

v) Forest Planting

5.1 Timber Resource Property

A Timber Resource Property is defined as a tenure that is subject to renewal (14) (Sec. 13 (21) d.i.). Within the Act a Crown timber licensee is said to control a Timber Resource Property.

5.2 Timber Limit and Cutting Rights

The term "timber limit" is not defined in the Act; however, the Supreme Court of Canada has ruled that ownership of a timber limit includes both ownership of the timber and the land defined in the limit (4).

Cutting rights may be defined as the right or licence to cut and remove timber from an area provided the area is not a timber resource property, i.e., is not subject to a renewal condition.

The sale of standing timber by a private landowner to

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[1] The term "property" refers to forested land and/or the right to harvest timber from forested land.

a logging contractor would provide the contractor with a cutting right.

The owners of timber limits or cutting rights are usually considered to be engaged in a lumbering or logging business whereas owners of other classes of forest property may obtain most of their income from employment or some other business activity.

5.3 Farm Woodlot

The Act recognizes that bona fide farmers may have woodlots from which they may sell logs, lumber, poles, firewood or Christmas trees and from which the income is usually minor in relation to the income from farming operations. The income received from these sales may be treated as income from farming and may be reported using the cash method as described in section 6.1 of this report.

5.4 Tree Farm

The planting, tending and harvesting of Christmas trees is regarded as a bona fide farming business whether or not the Christmas tree grower is carrying on any other farming operations.

Where tree sales are not reported by the sixth year after planting (or later depending on local growing conditions), the operation will not be allowed the "tree farm" designation, although it may be viewed as a form of "forest planting" as referred to in 5.5

below.

The term "tree farm", however, applies not only to property that has been planted with evergreens but to hardwood plantations as well. Tax specialists advise that Revenue Canada has not limited the classification exclusively to softwood plantations in the past and that hardwood plantations can be expected to receive the "tree farm" designation if they so qualify.

5.5 Forest Planting

A taxpayer who is not engaged in the business of lumbering or logging may undertake reforestation and subsequent forest management activities on an area of land with the objective of producing mature trees at a date well into the future. This type of property may be classified as a "forest planting" provided the taxpayer can show that the activity is a business that was undertaken with a "reasonable expectation of profit". In order to meet this test, it is necessary for the taxpayer to show that the reforestation project was undertaken in a systematic way, is being conducted in a business-like manner, and holds forth the prospect of a profit when the trees are mature (5).

Taxpayers who have purchased lands which contain stands of timber that have been established by natural processes and are not the result of a

reforestation project may also receive similar tax treatments provided to the owners of forest plantations.

This provides a significant incentive to individuals who may wish to conduct forest management activities on their own lands and it would appear that the "forest planting" classification would provide a mechanism whereby governments could encourage such activity.

Unfortunately, the Act does not attempt to define the term "reasonable expectation of profit" nor have the courts been successful in applying a broad meaning to the term, thus landowners may find it difficult to prove that a reasonable expectation of profit exists. It has been successfully argued that the owner of a tree farm or forest planting need not include within his definition and calculation of profit a recapture of the capital cost of the land used to grow the trees to maturity (6). However, it is necessary for the taxpayer to apply some future value to the timber crop in order to demonstrate that a profit could be expected at time of harvest.

A property which has been classified as a "forest planting" will retain that classification until such time as it ceases to be used for that purpose. This means that a taxpayer may purchase a property so classified and will derive any tax benefits which

accompany that property as long as he continues to manage the property in a business-like way and the property continues to hold forth the "reasonable expectation of profit".

It is not difficult to understand why many forest property owners find these classifications confusing and incomplete. Each property owner, under the present guidelines, must consider his own situation relative to the criteria established for the various classifications in an attempt to assign a forest property class to his land. Table 3 below presents a summary of some of the more important criteria as they apply to the different property classes.

Table 3. Criteria for Forest Property Classification

	Land owned by taxpayer	Taxpayer in logging business	Taxpayer must be a farmer
Timber Resource Property	No	Yes	No
Timber Limit or Cutting Right	Not required	Yes	No
Farm Woodlot	Yes	No	Yes
Tree Farm	Yes	No	No
Forest Planting	Yes	No	No

6.0 Income Tax and the Forest Property Owner

6.1 Reporting of Forest Income

The income earned by an individual or a company from the sale of standing timber or forest products will normally be considered as business income for tax purposes rather than as income from employment since, in most cases, the income will accrue to the forest property owner and no employer-employee relationship exists.

Forest income is normally reported for the taxation year in which it was accrued or became receivable regardless of when the proceeds from the operations were actually received. It is this reported income from which forest management expenses and capital cost allowances may be deducted when the taxpayer is calculating his taxable income.

An alternative method of reporting income, known as the cash method, may be used for certain classes of forest property. Income from farming operations including farm woodlots, tree farms and forest plantings may be reported in the taxation year during which the proceeds from the operations were actually received by the taxpayer. During taxation years in which forest management costs are incurred without corresponding income from the operations, there will be a "loss" from operations which may be deducted from income earned from other sources during the year.

The deduction for farm losses may be limited to \$2,500, plus one-half of any loss in excess of \$2,500 up to a maximum total deduction of \$5,000. However, tax specialists suggest that any taxpayer who is clearly operating a tree farm or forest planting (plantation or woodlot) with a reasonable expectation of profit should claim a deduction for his entire loss, treating the operation as a non-farm business activity (7).

6.2 Treatment of Forest Management Costs

Most of the costs associated with intensive forest management are deductible either as expenses or as capital expenditures subject to depletion or depreciation allowances.

An expense is deductible if:

i) it was incurred by the taxpayer, i.e., the forest property owner;

ii) it was incurred for the purpose of gaining or producing income;

iii) the income that is expected to be generated must relate to the property for which the expense was incurred. Court decisions indicate that it is sufficient to show that the expense was incurred with the intention and reasonable expectation that it would lead to or produce income; it is not necessary to prove that income has actually resulted.

Eligible expenses incurred during a taxation year are usually deducted from the income which accrued from the operations during the same year. However, in the case of a bona fide farming operation, the expenses may be deducted when they are actually paid for by the taxpayer and, if no forest income has been earned in the particular year, the expenses may be deducted from income earned from other sources.

Businessmen have long recognized the importance of maintaining complete and accurate records of revenues and expenses incurred by their businesses during the year. The owner of a forest property, who is managing his forest lands for profit and who intends to claim forest management expenses when computing his taxable income, should similarly maintain detailed records of any transactions which occur on the property.

Some of the forest management expenses eligible as deductions are listed in Table 4 below.

Table 4 - Eligible Deductions: Forest Management Expenses

1. Reforestation costs

a) scarification costs (not including the capital cost of scarification equipment)

b) seeding costs including the cost of purchasing the seed

c) planting costs including the costs of the tree stock.

2. Site productivity improvements

a) fertilization costs including the cost of fertilizer

b) the cost of drainage improvements such as ditches and tile beds for bona fide farming operations (Sec. 30).

3. Stand tending

a) pruning costs

b) thinning costs (income earned from thinning operations must be reported)

c) herbicide and pesticide application costs including the cost of chemicals.

4. Harvesting

a) direct harvesting costs (excluding the capital cost of harvesting equipment or access roads that will be used for more than one taxation year).

5. Other expenses

a) property taxes

b) mortgage interest

c) interest paid or payable on loans obtained for forest management activities

d) maintenance costs

e) the cost of materials and tools including power saw expenses (gas, oil, maintenance) and the capital cost (less trade-in value) of power saws purchased by the taxpayer in the taxation year and used on the forest property.

Most forest management activities will require some degree of labour for which wages or salaries would be paid. These wage and salary expenses are fully deductible and provide the owner of a tree farm or forest planting with an opportunity to employ his children in the business if they cannot find satisfactory summer jobs elsewhere (7). At the present time, amounts paid to children will be deductible in computing the income of unincorporated businesses. The salaries paid should be comparable to those paid in the market-place and if the taxpayer proceeds in a business-like manner with a project that could show a profit, then any current "loss" from the project would be deductible against income from other sources.

6.3 Treatment of Capital Costs

Capital expenditures are those costs associated with the acquisition of capital assets or property, including land, buildings and equipment. In the case of forest property, included is the acquisition of timber limits or cutting rights, the acquisition of equipment and the construction of access roads.

The "capital cost of the property" generally means the full cost to the owner of acquiring the property and includes the legal, accounting, engineering and other fees incurred to acquire the property (8). In all cases the capital cost allowances are based on the original cost of the property to the taxpayer.

Capital cost allowances are claimed at varying rates for each class of depreciable assets. The classes fall into two groups - those for which the allowance is calculated on the diminishing or declining balance basis, and those for which the write-off is computed on a straight-line basis. It is important to note that an asset must be specifically included in a particular class if allowances are to be deducted at the rate indicated. Land is a non-depreciable asset and is excluded from all capital cost allowance classes. A complete list of all depreciable assets is found in Schedule II of the Income Tax Regulations. However, some highlights which may be of interest to forest property owners are described here.

i) Woods assets (Class 15)

This class consists of depreciable property which was acquired for the purpose of cutting and removing merchantable timber from a timber limit, such as harvesting equipment, maintenance facilities, camps and office buildings, and will be of no further use to the taxpayer after all the merchantable timber has been removed from the limit.

The maximum amount that may be deducted in respect of woods assets included in Class 15 is an amount computed on the basis of a rate per cord or board foot cut in the taxation year. If all the assets claimed in the class are used in connection with one timber limit or section thereof, the rate per cord or board foot is calculated by dividing the undepreciated capital cost of the assets by the number of cords or board feet of timber in the limit or section thereof as at the commencement of the taxation year. Where different parts of the property are used in connection with different timber limits or sections thereof, separate rates must be calculated for each part of the assets as though each part were the taxpayer's only assets claimed in the class.

Some of these assets could be included in Class 10 instead of Class 15 if the taxpayer so elects.

ii) Access roads and trails (Class 10)

Access roads and trails constructed for harvesting operations or for protecting standing timber against fire, insects and disease are included in Class 10. The maximum deduction permitted is 30% of the undepreciated capital cost of the roads or trails at the beginning of the taxation year.

iii) Buildings, fences and greenhouses (Class 6)

Certain types of buildings such as storage sheds and maintenance facilities are eligible for allowances under this class if they are used for the purpose of gaining or producing income from bona fide farming operations. Capital cost allowances for fences and greenhouses are not restricted to farming operations. A maximum deduction of 10% of the undepreciated capital cost of the property at the beginning of the taxation year is permitted.

6.3.1 Depletion Allowances: Timber Limits and Cutting Rights

The Income Tax Regulations (Sec. 110.(3)) specify that each property of a taxpayer that has a timber limit or cutting rights is prescribed to be a separate class of property for capital cost allowances. The Regulations specifically exclude a timber resource property and a right to cut timber that is inherent in control of a timber resource property from treatment under this section.

Since land is a non-depreciable asset, the owner of a timber limit or cutting rights is required to estimate the value of the land if the merchantable timber had been removed and to deduct this value from the capital cost of the property before computing the depletion allowances for the property.

The depletion allowances for timber limits and cutting rights are computed on a straight-line basis. The rate to be used is based on the volume of merchantable timber acquired by the property owner. As the timber is harvested or depleted, the capital cost of the property excluding the land value is written-off. Inherent in the calculations is the assumption that the merchantable timber acquired at the time of purchase will eventually be liquidated. The Regulations do permit the owner to adjust the rate at which the capital cost is written-off, if timber cruises establish that the quantity of timber is in fact substantially different from that used for the computation of the rate in previous years. It is clear that this would permit the adjustment of the rate of depreciation to account for increment added to the merchantable timber remaining, or for the addition of new volume when immature timber acquired with the cutting rights

or limit reaches maturity and is classed as merchantable. An adjustment such as this may not be in the best interests of the taxpayer however, since it would effectively reduce the rate at which the capital cost of the preperty would be written-off.

Rate adjustments which would permit the taxpayer to accelerate the rate at which the capital cost of the property is written-off may prove more advantageous to the taxpayer. Such an adjustment would occur only if the original volume estimate proved to be too high or if some of the merchantable timber was to be destroyed by natural causes such as fire or insect attack.

It is uncertain how the timber limit would be treated if the original stand was liquidated and a new crop of trees was planted. Presumably if planting occurred during a taxation year for which forest income was reported from the timber limit, the costs of planting would be treated as a deductible expense for that taxation year.

An outline of the regulations to be used when calculating depletion allowances for timber limits or cutting rights is contained in Appendix "A" of this report.

6.3.2 Depreciation: Timber Resource Property

The owner of a timber resource property is permitted to deduct 15% of the undepreciated capital cost of the property from the forest income earned from that property during the taxation year.

6.4 Capital Gains and Losses

The taxation of capital gains was incorporated into the Canadian tax system as a result of the 1971 Tax Reform. Although many taxpayers may be unfamiliar with the concept, it is straightforward in nature. One-half of all capital gains (called taxable capital gains) are included in the taxpayer's income and taxed at normal rates. The other half of the gain is received free of tax by the taxpayer.

The treatment of capital losses is somewhat different. One-half of capital losses realized in any year may be deducted from the taxable capital gains realized in that year. Where the deductible portion of the losses exceeds the taxable capital gains in any year, this excess may be carried back one year and forward indefinitely and deducted from taxable gains realized in those years. If the individual so elects, the excess may be deducted from income earned from other sources to the extent of $2,000 per year (7).

Although the Act does not define precisely what capital gain or loss is, some general guidelines can be applied to determine whether a taxpayer has a capital gain or loss.

The gain or loss must result from the disposition (or "deemed disposition") of "capital property". In general, a disposition of property occurs when there is a transaction which entitles the taxpayer to receive proceeds. The determination of whether a property is a "capital property" depends on both the nature of the property and the manner in which it is dealt with by the owner. For example, if an individual is deemed to be in the business of buying and selling cutting rights, the gain or loss from any transaction involving such property would probably be treated as ordinary business income or loss rather than a capital gain or loss.

6.4.1 Calculating Gains or Losses

The general rule is that a capital gain or loss is the difference between (1) the amount received as proceeds of disposition of the property in question and (2) the property's "adjusted cost base" plus any costs associated with disposing of the property including selling commission, legal costs and advertising expenses.

For property acquired after 1971 the adjusted cost base is the actual cost of the property to the

taxpayer or its deemed cost. Property acquired before the Tax Reform should have been assigned a value on Valuation Day.

There can be no capital loss, however, arising from the disposition of depreciable property such as timber limits, cutting rights and woods assets due to the fact that the cost of such property can be deducted for income tax purposes using capital cost or depletion allowances.

An exception to the general rule for calculating a capital gain or loss applies when a taxpayer sells his property to a relative other than his or her spouse. In this case the transaction will be deemed to have taken place at the fair market value of the property at that time (14) (Sec. 69 (1)). Therefore the actual price paid for the property by the purchaser may not be relevant for purposes of determining the proceeds to the transferor and the capital cost to the buyer. The effect of this regulation is to limit the ability of a property owner to minimize the capital gain that might otherwise accrue upon transfer of a capital property to a relative.

6.4.2 <u>Taxpayer's Principal Residence</u>

The principal residence represents an exception to the rule that one-half of the gain realized from the sale of a capital asset is taxable.

Under most circumstances a taxpayer may sell his home and no capital gain will arise.

A principal residence is a housing unit owned by a taxpayer or jointly by a taxpayer and another person. The land upon which the housing unit stands and adjoining land that contributes to the use and enjoyment of the housing unit is included in the principal residence. In order to prevent principal residence status being claimed for large tracts of land such as may be found in tree farms or forest plantings, taxpayers will be required to prove that any land in excess of one acre actually contributes to the use and enjoyment of the dwelling.

Fortunately however, tree farms are classified as bona fide farms and a regulation permitting a farmer to reduce the gain on the sale of farm land by $1,000, plus $1,000 for each year after 1971 for which the property was his principal residence, applies (14) (Sec. 40(2)(c)(ii)); and if the farm is sold to the farmer's spouse, child, grandchild, or great-grand-child, no capital gain will arise.

6.4.3 Disposition of a Timber Resource Property

A timber resource property is not considered to be a capital property. Any gain from the sale of such property is reported as business income (14) (Sec. 39 (1)).

6.4.4 Disposition of a Timber Limit or Cutting Rights

Although there are no specific regulations regarding the disposition of timber limits or cutting rights, the Supreme Court of Canada has ruled that a portion of the proceeds from the sale of such property would be considered to be business income and the remainder - that portion which exceeds the capital cost of the property - would be a capital gain (5).

There can be no capital loss arising from the disposition of a timber limit, cutting rights or a timber resource property since all are classed as depreciable property.

7.0 Forest Income in the United States

It sometimes seems that no study of a particular Candian situation is complete without the author making some reference to the similar situation as it exists in the United States. In this study of taxation of private forest land such a comparison is appropriate, for approximately 73% of the 202 million hectares of commercial forest land in the United States is privately owned while the remainder is held by the various levels of government. When compared to land ownership data as presented in Table 1, this difference is significant.

Of significance too is the fact that approximately 58% of the private forest land in the United States is owned by individuals, associations, and businesses not involved directly or indirectly in the manufacture of wood products. It is estimated that these 4 million owners of nonindustrial private forests supply 38% of the U.S. harvest of softwood and 76% of the hardwood (9). The benefits arising from private forest lands to the U.S. economy must indeed be great. What is the treatment of forest income and forest management expenses south of the border?

The sale or disposition of timber or forest property in the U.S. is generally considered to be a disposition of a capital asset which will result in a taxable capital gain to the owner measured by the difference between the proceeds received and the adjusted depletion basis

of the timber. Taxpayers who cut their own timber for sale or use or who receive stumpage payments for timber cut by a contractor will be eligible for this tax treatment.

A person who regularly buys and sells timber such as a timber dealer is not entitled to capital gain or loss treatment on outright sales. Proceeds from such sales will normally be treated as routine business income (10).

The monetary benefits of such treatment are substantial. The 1978 Revenue Act established the capital gain rate for corporations and individuals at 28% on the first $50,000. The corporate rate on ordinary income is 46%, thus the margin between the ordinary income and capital gains rates is 18%.

These tax provisions have acted as an incentive to the wood products industry to develop and manage corporate forest resources and have helped to attract investment capital to the industry. The effect of capital gains treatment in the private, noncorporate sector is reported to be less striking - perhaps because of the relatively smaller tax advantage to middle and lower income owners (10).

At present, all direct reforestation and stand establishment expenditures can only be recovered by being capitalized. Direct costs of reforestation are defined

to include all costs of site preparation, including girdling and bush removal; seedling purchase; labour; tools, including depreciation of planting equipment; and all measures necessary to maintain the stand until it is able to survive without assistance.

Expensing of costs, as permitted under the Canadian tax system, is usually more advantageous than capitalizing. In reducing ordinary income which is taxable at a comparatively higher rate, expensing lowers the tax bill more than does capitalizing, which reduces only long-term gains that are taxed at a lower rate. Expensing also subtracts the entire cost from current income and thus has an immediate benefit to the taxpayer - particularly those who are operating with limited financial resources.

There have been a number of proposals to permit reforestation costs to be expensed but such legislation has been widely resisted.

Expensing is conceptually inconsistent with treating timber as a capital asset and thus timber income as a capital gain. Fear exists that allowing the expensing of reforestation costs would encourage attacks on capital gains. Tax credits or tax offsets are recommended as a more desirable alternative.

A bill to introduce such tax credits was passed by the Senate and received Presidential approval in 1980.

The Packwood bill provides for a 10% investment tax credit for private landowners, plus a 7-year amortization for costs of site preparation, seeds and seedlings, and for labour and tools including depreciation. A dollar limit of the credit is $10,000 per year and the total amount to be amortized over 7 years is $10,000. There is no limit on the size of land ownership. It is expected that the bill will encourage reforestation on public and private lands (10).

8.0 Real Property Assessment and Taxation in Ontario

Assessment is the process by which the local tax base in the form of real property is valued for the purposes of municipal and school taxation. In Ontario, the provincial government is responsible for the assessment of all real property.

The property tax itself is the product of two factors: the taxable assessment value (as determined by the provincial assessors) and the mill rate (as established by the local municipal authorities). The property tax is the total tax funds required to be raised by local government authorities, and the mill rate is determined by dividing the required funds by the total taxable assessment values as shown below (11).

$$\frac{\text{total tax funds required}}{\text{total taxable assessment}} \times 1{,}000 = \text{Mill Rate}$$

The property tax to be paid by the owner of a particular property is calculated by multiplying the mill rate by the established taxable assessment value of that property.

The Report of the Commission on the Reform of Property Taxation (1977) recommended that real property in the province be assessed at market value on the premise that "market value" is the amount that the property might be expected to realize if sold in the open market by a willing seller to a willing buyer. This recommendation was adopted

by the government and in 1979 assessments had been prepared for all municipalities at market value, based on 1975 values. The assessment role now shows a single amount for the total property value without distinguishing between the value of the land, including the timber or trees thereon, and the value of any buildings or improvements located on the property (12).

To date, the new assessments based on market values of 1975 levels have not been fully implemented and, accordingly, those values in effect in 1970 may still apply in some municipalities in Ontario; however, many have already adopted market value assessment.

8.1 Assessment of Forest Property

Privately owned forest lands in Ontario and all other real property except farm lands are assessed at the highest value that could be obtained for them in the open market, regardless of what their current or future use may be. Reforestation of any parcel of land neither increases nor decreases the assessed value by reason only of the planting of trees (The Assessment Act, Sec. 27 (6)); and land used as woodlands shall not be assessed at a greater value by reason of the presence of trees thereon nor at a lesser value by reason of the removal of the trees (The Assessment Act, Sec. 27 (7)).

The Assessment Act does make some exceptions for farm lands and all buildings thereon as noted above.

They are assessed at the value that could be obtained for them if they continue to be used for farming purposes - a value usually lower than the market value of non-farm lands such as residential, commercial or industrial lands.

In addition to the property assessment advantages enjoyed by farm lands, farm woodlots are exempt from taxation when they do not exceed 10% of the total farm acreage or a maximum of 20 acres, whichever is the lesser.

As mentioned in Chapter 2, the Province of Ontario does not recognize tree-farming as a bona fide farming operation. Therefore, forested lands in the province are not eligible for assessment as farm lands and as a consequence are assigned other classifications for assessment purposes. This would indicate that if land previously classified as farm land were converted to forest land by means of planting, such land would be assessed at a higher rate.

On the other hand, a farmer may reforest a significant proportion of his farm land and continue to retain the farm land classification, provided the portion of land not reforested continues to be used for farming purposes. In addition, the benefits of Section 27 (6) of <u>The Assessment Act</u> would be available to the farmer

for acreage reforested not in excess of 10% of the total farm acreage or 20 acres, whichever is the lesser.

8.2 The Managed Forest Tax Reduction Program

In 1975, the Government of Ontario introduced the Managed Forest Tax Reduction Program authorized under the Forestry Act to encourage proper management of private forests. The program is administered jointly by the Ministry of Natural Resources and the Ministry of Intergovernmental Affairs. Its effect is to reduce the impact of market value assessment on owners of forest land that is not assessed as farm land.

Owners of managed forests may be eligible for a grant equivalent to 50% of the municipal and school taxes or local roads board taxes that have been levied on the land occupied by their forest (13).

This requires that the assessment officer prepares a separate assessment for the forested part of the property after the market value assessment for the entire property has been completed. To obtain the grant, the owner of a managed forest must then apply to the Subsidies Branch, Ministry of Intergovernmental Affairs.

The grants have been non-taxable, but will become taxable for the first time in 1981.

8.3 Proposed Assessment and Tax Revisions

In his 1981 Ontario Budget (15), The Treasurer announced a proposal to revise the property assessment and taxation system described in Section 8.1 and 8.2.

The proposed reform relates both to farms and to managed forests. Essentially, the proposal is that residences on such properties should be treated the same way as any other residence. However, recognition should be given to the contribution of farm land and buildings and to management forests by the following:

- full exemption from property taxation,
- elimination of farm and managed forest tax rebate programs,
- compensation to local government for taxes foregone through exemptions.

The government has stressed that a number of significant issues require study and resolution before the proposal could be implemented. If accepted, the earliest implementation date is the 1983 taxation year.

APPENDIX A

Depletion Allowances - Timber Limits and Cutting Rights

Schedule vi of the Income Tax Regulations outlines the method to be used when computing the depletion allowances for timber limits and cutting rights.

The amount that may be deducted in respect of a timber limit or cutting rights is the lesser of:

(1) the undepreciated capital cost of the timber limit (as of the end of the year and before making any deductions under this provision) or

(2) the aggregate of (a) an amount computed on the basis of a rate (depletion rate) per cord or board foot cut in the year and (b) certain allowances for survey and cruise expenses.

The computation of the depletion rate will depend on whether or not the taxpayer has been given an allowance in respect to the timber limit in a previous taxation year. Where such an allowance has not been granted, the rate is to be determined as follows:

> The aggregate of the residual value* of the timber limit and the survey expenses included in its capital cost are deducted from the capital cost of the limit, and the result is divided by the quantity of timber that the taxpayer has a right to cut. Where an allowance

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* "Residual value" is the estimated value of the property if the merchantable timber were removed.

has been granted in respect of the timber limit in a previous taxation year, the rate is determined in two ways, depending on circumstances. At this time the rate may be adjusted if a timber cruise confirms that an increase in increment to the remaining timber or the maturity of previously unmerchantable timber has increased the total volume the owner has a right to cut. The new rate will be determined by deducting the residual value of the timber limit from its undepreciated capital cost at the commencement of the year, and dividing the result by the estimated volume of timber remaining in the limit or that the taxpayer has a right to cut.

If no difference in volume has been determined, the rate will remain unchanged from that of the most recent year for which an allowance was permitted.

The allowance in respect of survey and cruise expenses is the lesser of:

(1) 1/10 of the amount expended by the taxpayer after the commencement of his 1949 taxation year for surveys, cruises and the preparation of maps, etc., for the purpose of obtaining a licence or cutting rights (provided that the expense was included in the capital cost of the limit), or

(2) the amount as described above under (1) minus any amounts deducted in previous years.

Instead of the allowances described above, a taxpayer

may elect to claim an amount that is the lesser of (a) \$100, or (b) the amount received by him in the taxation year from the sale of timber.

Example: <u>Depletion Allowances - Timber Limits and Cutting Rights</u>

In 1975, a company engaged in the business of logging purchased a timber limit at a cost of \$110,000. The estimated residual value of the limit was \$9,000 and survey and cruise expenses of \$1,000 were included in the capital cost. The volume of merchantable timber contained in the limit was estimated to be 50,000 cords. The company has the right to cut all the timber in the limit.

During the taxation years of 1975-1979 inclusive, the company harvested 5,000 cords of timber annually from the limit.

The capital cost allowance is computed as follows:

$$\text{depletion rate} = \frac{\text{capital cost} - (\text{residual value} + \text{surveys cost})}{\text{volume of timber available to cut}}$$

$$= \frac{\$110{,}000 - (\$9{,}000 + \$1{,}000)}{50{,}000 \text{ cords}} = \$2.00/\text{cord}$$

As no survey or cruise was taken until the 1980 taxation year, the annual capital cost allowance for the 5 years was:

5,000 cords x \$2.00 = \$10,000 per year.

The 1980 cruise determined that 30,000 cords of merchantable timber remained in the limit. The residual value is still

estimated to be \$9,000. The new depletion rate is calculated as follows:

$$\text{depletion rate} = \frac{\text{undepreciated capital cost - (residual value + surveys)}}{\text{volume of timber at commencement of taxation year}}$$

$$= \frac{(\$110{,}000 - \$50{,}000) - (\$9{,}000 + \$1{,}000)}{30{,}000 \text{ cords}}$$

$$= \frac{\$50{,}000}{30{,}000 \text{ cords}} = \$1.667 \text{ per cord}$$

If harvesting continues at a rate of 5,000 cords per year, the allowable deduction for the 1980 taxation year will be:

\$1.667 x 5,000 cords + \$100 (cruise allowance) = \$8,435

If the 1980 cruise had determined that only 20,000 cords of timber remained, the new depletion rate would be \$2.50 per cord and the allowable deduction on 5,000 cords harvested in 1980 will be:

\$12,500 + \$100 for cruise expenses.

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